

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance
Producer's License (No. IN10243) and
the Notary Commission (No. 6152407)
of Eric Sundquist

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on September 25, 2006, at 4:00 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Eric Sundquist, 29162 West Shore Lane, Pengilly, MN 55775, or his attorney, John F. Hedtke, Attorney at Law, 1217 East First Street, Duluth, MN 55805. The OAH record closed on September 25, 2006.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions

to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issue presented in this case is whether the Respondent, Eric Sundquist, is past due on a loan he obtained from First National Bank of Chisholm, Minnesota, to finance the purchase of an insurance agency and the building in which it is located and transferred secured assets without the consent of that bank, thereby demonstrating financial irresponsibility, incompetence, and untrustworthiness in violation of Minn. Stat. §§ 45.027, subd. 7(4) and 60K.43, subd. 1(8) (2004), and whether the Respondent failed to appear for questioning by the Department of Commerce on April 27, 2006, and thereby violated Minn. Stat. § 45.027, subd. 1 and 1a (2004); and, if so, whether the Respondent's insurance producer's license or his notary commission should be disciplined.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges initiating this contested case proceeding was served on the Respondent, Eric Sundquist, via first class mail on May 8, 2006, at the following address: 29162 West Shore Lane, Pengilly, MN 55775.^[1]

2. The Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges included the following language:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.^[2]

3. The Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges initially set the hearing in this matter for June 6, 2006, at 9:30 a.m.^[3]

4. John Hedtke, Attorney at Law, informed the Administrative Law Judge by telephone on June 5, 2006, that he represented the Respondent. Counsel for both parties informed the Administrative Law Judge on June 5, 2006, that they wished to explore settlement and jointly requested a continuance of the June 6, 2006, hearing. The request for a continuance was granted.^[4] Mr. Hedtke never filed a formal Notice of Appearance, and it is unknown whether he continues to represent the Respondent.

5. Counsel for the Department thereafter informed the Administrative Law Judge that settlement discussions between the parties had not been successful. By letter dated September 1, 2006, the Administrative Law Judge informed Mr. Sundquist and

counsel for the Department that a prehearing conference to discuss a new hearing date would be held on Monday, September 25, 2006, at 4:00 p.m. at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401. The letter was sent directly to Mr. Sundquist because Mr. Hedtke had never filed a Notice of Appearance and the Administrative Law Judge was unable to locate an address or telephone number for him. Mr. Sundquist was directed to forward a copy of the letter to Mr. Hedtke as soon as possible. The letter stated, **“If no one appears at the prehearing conference on behalf of Mr. Sundquist, it will result in a finding that he is in default and the allegations in the Notice and Order for Hearing will be taken as true.”** (Emphasis in original.)

6. After receiving the September 1, 2006, letter, counsel for the Department provided the Administrative Law Judge with Mr. Hedtke’s office phone number and the Administrative Law Judge called his office to ascertain his mailing address. By letter dated September 5, 2006, the Administrative Law Judge informed Mr. Hedtke that a prehearing conference had been set for September 25, 2006, and provided him with a copy of the September 1, 2006, letter.

7. Neither the Respondent nor Mr. Hedtke made any request prior to the September 25, 2006, prehearing conference for a continuance or any other relief. No one appeared at the prehearing conference on September 25, 2006, on behalf of the Respondent.

8. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

9. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 45.027.

2. The Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Pursuant to Minn. Rules 1400.6000, a default occurs when a party “fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge.”

4. The Respondent, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges are hereby taken as true.

5. By being past due on a loan he obtained from First National Bank of Chisholm, Minnesota, to finance the purchase of an insurance agency and the building in which it is located, transferring secured assets without the consent of that bank, and failing to appear for questioning by the Department of Commerce on April 27, 2006, the Respondent has violated Minn. Stat. §§ 45.027, subds. 1, 1a, and 7(4), and 60K.43, subd. 1(8) (2004). The Respondent's insurance producer's license and notary commission are subject to discipline under Minn. Stat. § 45.027, subd. 7, and 60K.43, subd. 1, as a result. The imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take appropriate disciplinary action against the insurance producer's license and notary commission of Eric Sundquist.

Dated: October 5, 2006

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

^[1] Affidavit of Service by First Class Mail of Jean-Anne Gates attached to Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges.

^[2] Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges, p. 4.

^[3] Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, and Statement of Charges, p. 2.

^[4] See Sept. 1, 2006, letter to Mr. Sundquist and Mr. Tostengard from the Administrative Law Judge.